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ABSTRACT

A study identified and evaluated the approach of small colleges in dealing with hate speech and/or verbal harassment incidents. A questionnaire was sent to the Dean of Students at 200 randomly-selected small (500-2000 students), private, liberal arts colleges and universities. Responses were received from 132 institutions, for a response rate of 66%. Data were placed in appropriate categories, quantified, and evaluated according to standards of constitutionality and effectiveness, as determined by a review of relevant court cases and scholarly literature. Results indicated that a majority of schools have neither a verbal harassment, nor a hate speech policy. Results also indicated that the schools which do have policies employ vague language; the terminology lacks precision in identifying offending behaviors. Findings suggest the following guidelines for developing a hate speech code: (1) uphold students' first amendment rights to voice hate ideas, but, at the same time, regulate unwanted hate epithets; (2) assume that harm inherently ensues from hate epithets; (3) respond to the vagueness and overbreadth concerns expressed by justices in federal court decisions; and (4) establish a range of sanctions which give primacy to educational rather than punitive purposes. (Seven figures of data are included.) (RS)

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# HATE SPEECH ON SMALL COLLEGE CAMPUSES

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TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

During recent years, academic institutions reported an increase in hate speech based on race, religion, ethnicity, gender, or sexual orientation. Most of the cases reported in the press occurred at large universities.[1] A nationwide mail and telephone survey suggests that incidents of hate speech also occur on small college campuses. Some examples follow: anonymous phone calls urged blacks to "Get out of town, nigger!"; an anonymous note stated "Ugly Dyke, suck my dick till you die."; "Hispanic members of a fraternity were called "Spicks" and had signs placed on their cars stating, "Can't you park like a white man?"; a male student addressed a female resident assistant as a "fat bitch"; a group of black students and a group of Arabic students exchanged epithets, referring to the opposing group as "niggers" or "sand niggers," leading to a physical encounter; a swastika was painted on the classroom wall of a Hebrew Language class.[2] Clearly, incidents of hate speech take place in all geographic locations, at varied types of institutions of higher education.

## PURPOSE

Several institutions have adopted codes designed to deal with the problem; a few have received detailed attention in scholarly literature. The programs cited most frequently are those adopted by the University of Michigan,[3] and the University of Wisconsin,[4] both of which were subsequently declared by courts to be vague and overbroad. Other policies which received considerable attention were drafted by Stanford University,[5] the University of Texas,[6] and the University of California.[7] These articles analyze policies adopted by large universities; they fail to consider codes in place at small colleges.

The purpose of this study is twofold: 1) to identify and evaluate the approach of small colleges in dealing with hate speech and/or verbal harassment incidents, and 2) to suggest guidelines for a policy which copes with such incidents.

## METHOD

A questionnaire was sent to the Dean of Students at 200 randomly-selected small (500-2000 students), private, liberal arts colleges and

universities. The questionnaire asked:

1. Policy -- Does your college have a stated policy regarding verbal harassment and/or hate speech?
   a. If the answer is "yes," the dean was requested to send a copy of the specific wording of the policy.
   b. If the answer is "no," the dean was asked to indicate whether the school plans to write a policy.

2. Dissemination -- Is a statement of the policy included in your school's student handbook, faculty manual, college catalog, or other forms of campus media? Which?

3. Implementation -- During the past seven years (1985-92), have you implemented this policy? If so,
   a. Was the matter resolved internally, or was an external method of settlement required?
   b. What form of sanction (e.g. counseling, probation, suspension, expulsion) was imposed?

The author received 132 responses, a rate of 66%. Data were placed in appropriate categories, quantified, and evaluated according to standards of constitutionality and effectiveness, as determined by a review of relevant court cases and scholarly literature.[8]

## RESULTS

The data suggest that small colleges employ a general approach. A majority of schools have neither a verbal harassment, nor a hate speech policy (see Figure 1). The schools which have policies employ vague language; the terminology lacks precision in identifying offending behaviors.

Figure 1
Approach to Verbal Harassment Issue (n=132)

| Approach | Number | Percent |
|---|---|---|
| No Policy | 77 | 58 |
| Policy | 55 | 42 |

No Policy

Most schools (77 schools, 58%) have "no stated policy" which proscribes or regulates either verbal harassment or hate speech. These schools deal with such incidents under a general code of student conduct, or a broad harassment policy. The code does not mention the terms "verbal" or "hate speech." The policies identify conduct that is prohibited: for example "actions" which are "abusive" "hazing" "threatening" "embarrassing" "harmful." But, they do not cite "verbal," "expressive," "communicative," or "speech" acts as punishable behavior.[11]

Some deans plan to write a policy geared toward the verbal harassment/hate speech issue. Others are content with current programs (see Figure 2). There are advantages to such an administrative stance. A general policy provides flexibility in dealing with an alleged abuse, and allows resolution on a case-by-case basis. The administration is not bound to a particular response. The negative side of this approach is that lack of specifics may lead to confusion among students, staff, and faculty as to what constitutes an offense. The policy provides adminis-

Figure 2
Future Plans of No Policy Schools (n =77)

| Plan | Number | Percent |
|---|---|---|
| Prepare new Policy | 17 | 22 |
| Keep Current Policy | 60 | 78 |

trative leeway, but fails to educate the community about expected conduct. It seems plausible that any individual who is found guilty of violating campus policy, and subsequently appeals that finding through the court system, would have an arguable case on the ground that the behavior is not identified clearly as prohibited conduct.

Policy -- Form

Schools which have a "verbal harassment" policy can be classified according to the form in which the policy is expressed (see Figure 3).

Figure 3
Form of Policy ( n=55)

| Type | Number | Percent |
|---|---|---|
| Harassment (Sexual and/or Racial) | 28 | 50.9 |
| Code of Conduct | 22 | 40.0 |
| Statement of Principles | 2 | 3.6 |
| Fighting Words | 2 | 3.6 |
| Harassment (Verbal) | 1 | 1.8 |
| Hate Speech | 0 | 0.0 |

The majority (28 schools, 51%) locate the "verbal" component within a broad sexual and/or racial harassment policy. Most of these policies are ambiguous; few provide a detailed definition of verbal harassment. A substantial number (22 schools, 40%) discipline verbal harassment under a code of student conduct. These policies list prohibited behaviors (slurs, profanities, communicative threats, innuendos), without providing precise definition. Two (3.6%) schools cope with verbal harassment by applying a philosophical statement of college principles. These policies pledge a commitment to both freedom of expression and liberty to pursue the lifestyle of personal choice. Two schools (3.6%) apply the "fighting words" doctrine. One school (1.8 %), has a "Spoken, Written, and Symbolic Harassment" policy. No policy contains the term "hate speech," a surprising fact in light of the predominant use, by authors of scholarly articles, of those words to describe verbal

harassment incidents.

Policy -- Content

The policies examined in this study address several content elements: subject matter, media, source, receiver, effect, and location. Some policies contain minimal consideration of the content elements, others provide thorough treatment (see Figure 4).

Figure 4
Detailed Coverage of Content elements (n=55)

| Element | Number | Percent |
|---|---|---|
| Subject Matter | 34 | 62 |
| Media | 10 | 18 |
| Source | 11 | 20 |
| Receiver | 13 | 24 |
| Effect | 20 | 36 |
| Location | 3 | 5 |

Subject Matter. (34 schools, 62%) provide an in-depth discussion of the subject matter covered by the policy. They focus on attributes of the addressee, and unprotected forms of expression. Relevant attributes include race, ethnicity, religion, gender, handicap, national origin, sexual orientation, age, physical characteristic, or ancestry. This list seems to include all relevant attributes which provide bases for verbal harassment.

Unprotected forms of expression include those which "demean," "insult," "slur," "denigrate," "stereotype," or "stigmatize." This list seems overbroad. Expression which insults, stigmatizes, stereotypes, or slurs another person may be offensive, while warranting constitutional protection. A policy should narrow the forms of prohibited expression to those which "demean" or "denigrate" (i.e., deny validity, degrade) on the basis of any of the attributes listed above.

Some schools tag on qualifiers such as: "or other remarks," "as well as other forms," "determined on a case-by-case basis." Qualifiers leave the policy open to a charge of vagueness; these descriptions fail to identify which forms of expression are prohibited.

As noted earlier, two policies cite "fighting words" as punishable subject matter. This approach limits the policy's reach, being applicable only in cases where expression has potential for evoking fisticuffs. How about a racist epithet expressed by a female to a macho male? How about a demeaning term uttered by a teen age student to a senior-citizen faculty member? How about an expression which lowers self esteem and drives the victim to flight rather than fight? A "fighting words" policy cannot deal with such incidents. A policy should punish subject matters that go beyond mere "fighting words."

Media. (10 schools, 18%) describe the media applicable to the policy. Some descriptions are specific, listing the range of punishable media to include: namecalling, slurs, epithets, illustrations, jokes, slogans, invectives, innuendos, gestures, public displays of burning crosses or swastikas, marches or parades, phone calls, notes, letters, computer messages. Other descriptions are general, citing spoken, written, pictorial, graphic, or symbolic verbal and non-verbal expression. The lengthy list of media seems unnecessary; a statement including "spoken, written, graphic, or technologically-transmitted expression" covers any abuse.

Source. (11 schools, 20%) recognize the mental state of the source. Some policies require the offense to be "intentional" or "willful," the source must "intend" or have the "purpose" of causing harm, the speaker "should know" which expression is banned. Other policies warn that "ignorance is no excuse," that campus personnel have the "responsibility of leaning what others understand" to be offenses, so that a source does "not offend in ignorance."

These descriptions suggest that 1) to be found culpable, the source must behave in an intentional manner, and 2) learning which behavior is prohibited is the source's responsibility. Both requirements are flawed. First, intent is difficult to determine. How does anyone, other than the

source ever know intent? After all, the speaker may not intend to demean or denigrate; he or she may intend to inform, persuade, emote? The policy is constitutionally vague, and difficult to implement without a detailed definition of what constitutes intent, and an explication of how intent is determined. Second, placing responsibility for knowledge on the source falsely assumes that individuals can, by themselves, overcome a lifetime of indoctrination toward racism, sexism, ageism, and all the other "isms." Schools can facilitate such education only when 1) a detailed policy with a clear statement defining intention is in place, and 2) the school, through orientation, guest speakers, campus publications, and curricular offerings, provides education about acceptable communicative behavior.

Receiver. (13 schools, 24%) describe the victim of the demeaning expression. Most of these policies require that the expression be "addressed directly to, or made in the presence of, the individual or individuals whom it demeans." This wording encompasses the proper victim/s. It focuses on face-to-face offenses, and applies to an individual and/or group.

Effect. (20 schools, 36%) address the effect of demeaning speech. Several policies focus on physical effects: speech which "disrupts the normal operation of the college," creates "an intimidating, hostile, or offensive work, study, or social environment," or which "unreasonably interferes with an individual's work or academic performance." Two policies punish "fighting words," that is, expression that is both demeaning, and has potential to produce a physical alteration.

But, verbal harassment includes psychological harm as well. Hate epithets may result in "loss of self esteem," "feelings of alienation," "withdrawal," "anxiety," "depression," "hypertension." An effective policy must address not only physical effects, but also emotional and psychological harms.

Location. (3 schools, 5%) specify that "different concerns exist in respect to spaces used for public forums, classrooms, or other settings." They claim that in academic centers such as classrooms, offices, libraries, study halls, college assemblies, and campus media, "open discussion of controversial subjects is encouraged." No individual living

in college housing, however, "should be expected to put up with discriminatory harassment." The locational distinctions cited above seem unnecessary. This writer believes that open discussion of controversial subjects should be protected under the first amendment, not only in academic centers, but in all locations. This writer also believes that unwanted discriminatory harassment should be tolerated in no locations. The most effective policy would ban discriminatory verbal harassment in all campus-owned buildings and/or at all campus-sponsored functions. The policy would include classrooms, workplaces, campus residences, and recreational facilities. That approach acknowledges that discussion of controversial issues is always protected, while the utterance of unwanted discriminatory verbal harassment is never protected.

Dissemination

Schools with verbal harassment policies do not disseminate that information in uniform fashion. Almost all schools inform students through publication in the student handbook. Some schools use other media (see Figure 5).

Figure 5
Dissemination of Policy Details (n=55)

| Medium | Number | Percent |
|---|---|---|
| Student Handbook | 53 | 96 |
| Faculty Manual | 17 | 31 |
| Staff Handbook | 5 | 9 |
| College Catalog | 5 | 9 |
| Pamphlets | 5 | 9 |
| Campus Meetings | 1 | 2 |
| Orientation | 1 | 2 |

For most schools, the method of dissemination serves a punitive rather than an educational purpose. It provides a published statement of the policy that will be used to punish an offender. It seems directed primarily at students; other campus personnel are not the target of

dissemination. Schools would be better served by an education-based plan of dissemination, one which aims to inform personnel of verbal harassment policy for the purpose of preventing violations. An excellent starting point is orientation, where students are made aware, before they ever enter the classroom, of the school's commitment to protect students from verbal abuse. Other informational options include guest speakers, workshops, pamphlets, campus meetings, and curricular offerings.

Implementation

Most schools have implemented their policies. All incidents were resolved on campus. No school indicated that off campus resolution, through the court system, was necessary (see Figure 6).

Figure 6
Implementation of Policy (n=55)

| Method | Number | Percent |
|---|---|---|
| Not Implemented | 14 | 25 |
| Implemented Internally | 40 | 75 |
| Resolved Externally | 0 | 0 |

School administrators try to handle the matter internally, and thus avoid adverse publicity. This is the desired method for resolving campus verbal harassment incidents.

Schools incorporate a variety of sanctions in the punishment phase. The sanctions (see Figure 7) can be divided in terms of three functions: conciliatory, educational, and punitive. The conciliatory sanctions (informal conversation, mediation, letter of apology) occur first in time and function to prevent the matter from going to a formal hearing. The second level (counseling, educational programming) is designed to promote offender awareness of the harm that verbal harassment causes. The third level (censure letter in file, fine, probation, community service, restricted housing privilege, suspension, expulsion) is punitive; it

demands a toll from the accused. Any grievance procedure should operate in stages. The first efforts should be informal, only in later stages should the matter be resolved by a formal hearing, and the awarding of appropriate punishment if necessary. Every effort should be made to resolve the matter internally, short of a court hearing.

Figure 7
Punishment (n=40)

| Method | Number | Percent |
|---|---|---|
| Informal Conversation | 5 | 12 |
| Mediation | 9 | 23 |
| Letter of Apology | 4 | 10 |
| Counseling | 21 | 53 |
| Educational Programming | 4 | 10 |
| Letter in File | 1 | 3 |
| Fine | 1 | 3 |
| Probation | 9 | 23 |
| Community Service | 6 | 15 |
| Restricted Housing | 1 | 3 |
| Suspension | 12 | 30 |
| Expulsion | 3 | 8 |

## CONCLUSION

Based on the foregoing analysis, the author suggests the following guidelines for developing a hate speech code:

1. Require educational programming as a prerequisite to the implementation of any hate speech policy.

2. Uphold the first amendment right of students to voice hate ideas, philosophies, and theories; but, at the same time, regulate unwanted hate epithets.

3. Assume that harm inherently ensues from hate epithets, and focus on a source's persistent and repetitive intent to engage in unwanted hate expression.

4. Allow a source of unwanted verbal or symbolic harassment the option to stop the expression when confronted by the offended addressee.

5. Respond to the vagueness and overbreadth concerns expressed by justices in federal court decisions.

6. Encourage informal communication between the parties as the initial phase in the grievance procedure.

7. Establish a range of sanctions which give primacy to educational rather than punitive purposes.

It is hoped that the guidelines satisfy first amendment requirements, while effectively coping with incidents of abusive discriminatory expression. It is strongly recommended that implementation of the policy, which is ultimately punitive, will follow extensive efforts by the institution to educate campus personnel about the harms of verbal harassment. This may be accomplished through orientation programs, public speakers, campus publications, and curricular offerings. In that way, the college can expect the community to be knowledgeable about the causes and damaging effects of discriminatory verbal harassment, as well as aware of the provisions of the school's policy. The guidelines value communication as the desired solution to unwanted discriminatory communication, and turn to punitive measures only as a last resort.

## ENDNOTES

1. These incidents as well as others are described in the following sources: Delgado, Richard, "Campus Antiracism Rules: Constitutional Narratives in Collision," Northwestern University Law Review 85 (1991), 348-58; Ehrlich, Howard J., Campus Ethnoviolence and the Policy Options Baltimore: National Institute

Against Prejudice and Violence, 4 (1990); Hodulik, Patricia, "Racist Speech on Campus," Wayne Law Review 37 (1991), 1434-43; Lawrence III, Charles R., "If He Hollers Let Him Go: Regulating Racist Speech on Campus," Duke Law Journal (1990), 431-4; Magner, Denise K., "Racial Tensions Continue to Erupt on Campuses Despite Efforts to Promote Cultural Diversity," Chronicle of Higher Education 36 (June 6, 1990), A30; Martin, Charles A., "The Origins of Racial and Ethnic Conflict on U. S. College and University Campuses," Wayne Law Review 37 (1991), 1378; Matsuda, Mari J., "Public Response to Racist Speech: Considering the Victim's Story," Michigan Law Review 87 (1989), 2320-3; McGee, Robert W., "Hate Speech, Free Speech and the University," Akron Law Review 24 (1990), 364-72; Riccio, Ronald J., "Schools' Daze: Free Speech v. Freedom From Fear," New Jersey Law Journal 129 (October 10, 1991), 15; Siegel, Evan G. S., "Closing the Campus Gates to Free Expression: The Regulation of Offensive Speech at Colleges and Universities," Emory Law Journal 39 (1990), 1351-7; Wiener, Jon, "Reagan's Children: Racial Hatred on Campus," Nation (February 27, 1989), 260; Weiner, Jon, "Words that Wound: Free Speech for Campus Bigots?" Nation (February 26, 1990), 272-3; and Zollinger, Timothy B., "Doe v. University of Michigan, District Court Strikes Down University Policy Against Racial Harassment on Grounds of Vagueness and Overbreadth," Northern Illinois University Law Review 12 (1991), 159-60.

2. The author obtained these examples through written and/or oral communication with the Dean of Students at 132 small, private, liberal arts colleges.

3. Byrne, J. Peter, "Racial Insults and Free speech Within the University," Georgetown Law Journal 79 (1991), 412-3; Cohn, Judge Avern, "Doe v. University of Michigan: A somewhat Personal View," Wayne Law Review 37 (1991), 1313-23; "First Amendment -- Racist and Sexist Expression on Campus," 1398-1402; Hulschizer, Robin M., "Securing Freedom From Harassment: Without Reducing Freedom of Speech: Doe v. University of Michigan," Iowa Law Review 76 (1991), 383-93; Lange, Ellen E., "Racist Speech on Campus: A

Title VII Solution to a First Amendment Problem," Southern California Law Review 64 (1990), 109-12; Linzer, Peter, "White Liberal Looks at Racist Speech," St. John's Law Review 65 (1991), 194-6; McGee, 372-85; Sedler, Robert A., "Doe v. University of Michigan and Campus Bans on 'Racist Speech': The View from Within," Wayne Law Review 37 (1991), 1325-49; Sedler, Robert A., "The Unconstitutionality of Campus Bans on 'Racist Speech': The View from Without and Within," University of Pittsburgh Law Review 53 (1992), 653-9; Siegel, 1357-78; and Zollinger, 168-85.

4. Hodulik, Patricia B., "Prohibiting Discriminatory Harassment by Regulating Student Speech: A Balancing of First Amendment and University Interests," Journal of College and University Law 16 (1990), 573-87; Linzer, 196-7; McGee, 385-8; and Sedler, "The Unconstitutionality," 659-65.

5. Byrne, 413-5; Grey, Thomas C., "Civil Rights vs. Civil Liberties: The Case of Discriminatory, Verbal Harassment,": Social Philosophy and Policy 8 (1991), 106-7; Linzer, 198-201; Massaro, Toni M., "Equality and Freedom of Expression: The Hate Speech Dilemma," William and Mary Law Review 32 (1991), 252-63; and Siegel, 1391-3.

6. Linzer, 197-8; and Steger, Michael, "A Cautious Approach: Racist Speech and the First Amendment at the University of Texas," Journal of Law and Politics 8 (1992), 609-48.

7. Brownstein, Alan E., "Hate Speech at Public Universities: The Search for an Enforcement Model," Wayne Law Review 37 (1991), 1464-8; and Lange, 112-5.

8. Standards for judging the constitutionality and effectiveness of the policies are derived from a reading of the John Doe v. University of Michigan, 721 F.Supp 852 (1989) and UWM Post v. Board of Regents of the University of Wisconsin System, 774 F.Supp 1163 (1991) court decisions, as well as a review of hate speech literature (75 articles).

9. All policy phrases quoted in this paper are taken from appropriate college student handbooks, 1992-1993.